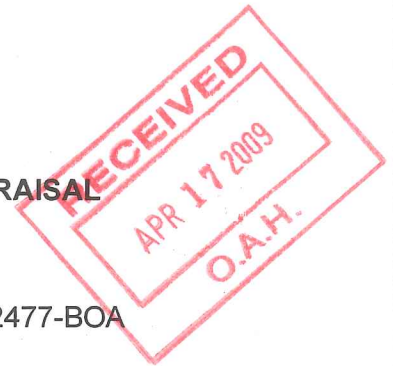


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BEFORE THE ARIZONA BOARD OF APPRAISAL



In the Matter of :

Case No. 08F-2477-BOA

ROBERT L. VAN DYKE,
Licensed Residential Appraiser
No. 10801,

Respondent.

**FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND ORDER OF PROBATION**

On April 16, 2009, the Arizona Board of Appraisal ("Board") met to consider the Administrative Law Judge Decision of Diane Mihalsky in the above-captioned matter. Robert L. Van Dyke did not appear. The State was represented by Jeanne M. Galvin, Assistant Attorney General. The Board received independent legal advice from Christopher Munns, Assistant Attorney General from the Solicitor General's Office.

The Board, having reviewed the administrative record and the Administrative Law Judge's Findings of Fact, Conclusions of Law and Recommended Order in this matter, and having considered the written and/or oral arguments of the parties and fully deliberating the same, takes the following actions on the recommended decision:

1. The Board hereby adopts the Findings of Fact of the Administrative Law Judge.
2. The Board hereby adopts the Conclusions of Law of the Administrative Law Judge.
3. The Board hereby adopts the Order of the Administrative Law Judge with modifications to include the Board's standard language regarding probation decisions.
4. The Findings of Fact, Conclusions of Law and Order shall read as follows:

FINDINGS OF FACT

BACKGROUND AND PROCEDURE

1. The Arizona State Board of Appraisal ("the Board") issued Residential Real Estate Appraiser License No. 10801 to Respondent Robert L. Van Dyke on July 15, 2002. Mr. Van Dyke's license is set to expire on July 31, 2010.
 2. On August 20, 2007, the Board received an anonymous complaint regarding a summary appraisal report that Mr. Van Dyke had performed of a property located at 2771 E. Wisteria Drive, Chandler, Arizona ("the Wisteria Drive property"), which report had an
- ✓

- 1 effective date of February 9, 2007. Mr. Van Dyke responded in writing to the complaint,
2 denying any wrongdoing.
- 3 3. The Board appointed contract investigator Jay B. Clark, a certified residential appraiser,
4 to investigate the complaint. Mr. Clark rendered a report of his investigation, which
5 opined that Mr. Van Dyke had violated certain Standard Rules ("SRs") of the July 1,
6 2006 edition of the Uniform Standards of Professional Appraisal Practice ("USPAP").
- 7 4. Based on Mr. Clark's report, on January 16, 2009, the Board issued a Complaint and
8 Notice of Public Hearing. The Complaint charged Mr. Van Dyke with violations of
9 USPAP SR 1-1(b) and (c), SR 2-2(a), (b), and (c), Standards Ethic Rule – Conduct and
10 Standards Ethics Rule – Competency in his preparation of the February 9, 2007
11 summary appraisal report on the Wisteria Drive property, which furnished cause to
12 discipline his license under A.R.S. § 32-3631 *et seq.* and A.A.C. R4-46-101 *et seq.*
- 13 5. The Board also noticed a hearing pursuant to A.R.S. § 41-1092 *et seq.* before the Office
14 of Administrative Hearings, an independent state agency, for February 23, 2009 at 9:00
15 a.m.
- 16 6. A hearing was held on February 23, 2009, at which Deborah G. Pearson, the Board's
17 Executive Director, Mr. Clark, and Mr. Van Dyke testified. The Board had admitted into
18 evidence 10 exhibits and Mr. Van Dyke had admitted into evidence one exhibit.

15 ADDITIONAL HEARING EVIDENCE

16 Ms. Pearson

- 17 7. The Board oversees approximately 2,700 licensed or certified residential and general
18 appraisers, consisting of the following three classifications: (1) State licensed real estate
19 appraisers, who can perform an appraisal or an appraisal review of noncomplex one-to-
20 four unit residential real properties having a value of less than \$1 million or complex one-
21 to-four unit residential properties having a value of less than \$250,000; (2) State certified
22 residential real estate appraisers, who can perform an appraisal or appraisal review of
23 one-to-four unit residential properties, without regard to complexity or value; and (3)
24 State certified general real estate appraisers, who can perform appraisals and appraisal
25 reviews of all types of real property.
- 26 8. On July 21, 2005, the Board had adopted Substantive Policy Statement #1, which under
A.A.C. R4-46-301 set forth five levels of violations based on escalating levels
seriousness and severity of penalty, ranging from nondisciplinary letters of concern to
license revocation.

- 1 9. The Board classified Mr. Van Dyke's violations in his appraisal of the Wisteria Drive
2 property as Level III, which were "[v]iolations found with substantial errors that in the
3 aggregate may affect the credibility of the assignment. Minor violations of ethics and/or
4 competency may be found. Violations found rise to the level of affecting the credibility of
5 the assignment." The penalty for a Level III violation was a Consent Agreement or an
6 "Order of Probation with Education, Mentorship and/or Practice Restrictions."
7
8 10. Mr. Van Dyke had one prior Level II complaint, which had resulted in a nondisciplinary
9 letter of remedial action on January 17, 2006 and required Mr. Van Dyke to complete a
10 7-hour course in appraising new residential construction within 90 days from the date of
11 the letter. Mr. Van Dyke had complied with the Board's requirements.
12
13 11. Ms. Pearson testified that, as a result of the Level III violation at issue, the Board hoped
14 to protect the public and improve the quality of Mr. Van Dyke's appraisal practice by
15 placing his license on probation for 12 months with the following terms: (1) Mr. Van
16 Dyke would be required to complete a minimum of 24 appraisal reports under the
17 supervision of a Board-approved mentor; (2) The mentor would be required to co-sign
18 any report that Mr. Van Dyke completed during the probationary term unless the client
19 objected, in which case the mentor would be required to perform an appraisal review; (3)
20 Mr. Van Dyke would be required to submit to the Board a monthly log of all the
21 appraisals he prepared; (4) The mentor would be required to submit to the Board a
22 monthly report of Mr. Van Dyke's improvements and persistent problems and the
23 number of appraisal reports prepared; (5) Mr. Van Dyke would be required to take 15
24 hours in report writing and 15 hours in basic appraisal practice in Board-approved
25 courses, in addition to the continuing education that the Board requires for continuing
26 licensure.

Mr. Clark

12. Mr. Clark has been a certified residential appraiser for 23 years. He has been self-
employed by his own small appraisal business since 1992. He has been one the
Board's contract investigators for four years.
13. When Mr. Clark receives a complaint from the Board to investigate, he ensures he has
no conflict-of-interest based on any interest in the subject property or past relationship to
the appraiser. After he accepts the assignment, he reads the initial complaint, the
appraiser's response, the appraisal report, and the appraiser's workfile, and researches
the Multiple Listing Service ("MLS"), public records, and county tax assessor's

1 information and conducts interviews of realtors who have first-hand information about
2 the subject property, comparable sales, or the subject's neighborhood.

3 14. Mr. Clark testified that the appraiser's workfile should contain all the research data on
4 which the appraiser had relied in his report for the subject property and comparable
5 sales.

6 15. In this case, a field review appraisal had been performed of Mr. Van Dyke's appraisal
7 report of the Wisteria Drive property. Mr. Clark testified that, in some cases, review
8 appraisals were routinely performed for quality control. But, in most cases, review
9 appraisals were performed based on "red flags" in the appraisal report, such as the use
10 of dissimilar or dated comparable sales. Mr. Clark assumed the review appraisal came
11 to the Board with the initial anonymous complaint.

12 16. The review appraisal of the Wisteria Drive property included comparable sales that were
13 not included in Mr. Van Dyke's appraisal report. Mr. Van Dyke's opinion of value of the
14 Wisteria Drive property was \$610,000. The appraisal review's opinion of value was
15 \$520,000.

16 17. Mr. Clark described Mr. Van Dyke's errors in the development of his appraisal report of
17 the Wisteria Drive property, which could have affected value, in violation of SR 1-1(b)
18 and (c),¹ as follows:

19 17.1 The zoning in the report was shown as R-4, Single Family. In fact, the zoning of the
20 property was PAD ("Planned Area Development"), Single Family. In all of metropolitan
21 Phoenix, R-4 is a multifamily zoning classification. The zoning of a property is readily
22 available to an appraiser.

23 17.2 Mr. Van Dyke's report stated that "[t]here are 15+/- comparable properties for sale in the
24 subject neighborhood ranging in price from \$400,000 to \$700,000" and that "[t]here are
25 30 +/- comparable sales in the subject neighborhood within the past twelve months
26 ranging in sale price from \$400,000 to \$800,000."

¹ SR 1-1 provides that, in developing a real property appraisal, an appraiser must:

(b) not commit a substantial error of omission or commission that significantly affects an appraisal; and

(c) not render appraisal services in a careless or negligent manner, such as making a series of errors that, although individually might not significantly affect the results of an appraisal, in the aggregate affects the credibility of those results.

- 1 17.3 Mr. Clark testified that, in a retrospective review, it is not possible to know what was
2 listed. But he was able to find four resales of similar homes in the neighborhood that
3 were selling for between \$449,000 and \$491,975, none of which were used in the
4 report.²
- 5 17.4 There was no highest and best use in Mr. Van Dyke's report. In most cases, a
6 property's highest and best use would be the existing use but in some cases, for
7 example, a residence on a corner that could be used as commercial, it would not.
8 USPAP requires a statement of highest and best use.
- 9 17.5 There is natural gas in the neighborhood and, according to the MLS and Mr. Clark's
10 interview with the realtor, the Wisteria Drive property was sold with gas heat. Mr. Van
11 Dyke's report stated that the forced-air heating used "ELEC" fuel.
- 12 17.6 Mr. Van Dyke's appraisal report of the Wisteria Drive property was not complete
13 because it did not include a letter of transmittal, photographs of the subject and
14 comparable sales, which are essential, and an appraisal certification of the purpose of
15 the report. USPAP required the report to be complete and self-contained.
- 16 17.7 Mr. Van Dyke's report stated incorrectly that the asking price of the subject in MLS was
17 \$534,965, when in fact it was listed for \$523,685 and shown as sold in MLS for
18 \$500,000. Mr. Clark pointed out that Mr. Van Dyke had reported that the subject sold
19 for \$534,965 on 12/08/06. Mr. Clark assumed that the builder had included upgrades.
20 The report contained no discussion of the reason for the higher actual selling price or
21 what sort of incentives had been included.
- 22 18. Mr. Clark testified that Mr. Van Dyke had violated SR 2-1(a) and (b)³ in reporting his
23 opinion of value in the following respects:

24 ² These available comparable sales are described at Finding of Fact No. 21, *infra*.

25 ³ SR Rule 2-1 provides that each written or oral real property appraisal report must:

- 26 (a) clearly and accurately set forth the appraisal in a manner that will not
be misleading;
- (b) contain sufficient information to enable the intended users of the
appraisal to understand the report properly; and
- (c) clearly and accurately disclose all assumptions, extraordinary
assumptions, hypothetical conditions, and limiting conditions used in
the assignment.

1 18.1 Mr. Van Dyke reported that the Wisteria Drive property had 3,829 square feet. But it
2 was assessed at 3,383 square feet and marketed in MLS at 3,148 square feet. Mr. Van
3 Dyke's report did not address the discrepancy. Based on Mr. Clark's interviews with
4 realtors who marketed homes in the subdivision containing the subject, he opined that
5 either Mr. Van Dyke's measurements were incorrect or he had measured the wrong
home.⁴

6 18.2 The report's narrative section consisted of "standard comments," which "tend to be used
7 for many different reports and are general in nature." The use of these standard
8 comments led to inconsistencies. For example, the Neighborhood section of the form
9 stated that "[p]roperty values have continued to increase in the past years" and that
10 "[t]he trend appears to be continuing." But the Neighborhood box portion of the reported
11 showed "stable" values. Mr. Clark testified that, with the builder still in control of the
12 new home sales, offering "generous incentives" per the MLS, market values were
probably not increasing at that time. In addition, the Market Comments section stated
that exposure times were between 15 and 90 days, but the box section showed 3-6
months.

13 19. Mr. Clark's report also addressed Mr. Van Dyke's response to the complaint, as follows:

14 19.1 The complaint stated that Mr. Van Dyke had inflated the subject value by \$90,000. Mr.
15 Van Dyke responded that "[a]ppraising is not [an] exact science it is subjective." Mr.
16 Clark opined that "[t]he choice of comparables does appear to have been only those
17 sales that supported a value closer to the lender's estimate of value rather than the
most similar and proximate sales."

18 19.2 The complaint charged that the distance to comparable sale #3 was inaccurate. The
19 report stated that Comp #3 was 1.5 miles to the west of the subject. The review
20 appraiser stated that it was 3.25 miles to the west. Mr. Van Dyke responded that sale
21 #3 was in actuality 2.7 miles to the west, that his error had resulted from the lack of
22 updated mapping programs, and that he had used "+/-" to indicate that the distance
23 could be more or less. Mr. Clark opined that "[a] +/- is not adequate to explain an error
of over 55%." Comparable sale #3 in fact was 3.37 miles to the west. Although using
the Maricopa County Assessor's GIS maps to place comparable sales in relation to the

24 ⁴ Mr. Clark testified that the Wisteria Drive property was a multi-level structure with somewhat complex
25 architecture. On the second level, the structure had a game room at a right angle to the upstairs
26 bedrooms. At the right angle was a circular alcove. An appraiser would have had to measure the radius
of the circular alcove to for the computer program to calculate square footage correctly.

1 subject where no mapping programs were available was "tedious and time consuming
2 . . . [, such significant error in proximity] does speak to the competency and diligence of
3 the person preparing the report."

4 19.3 The complaint stated that Mr. Van Dyke had ignored relevant comparable sales. Mr.
5 Van Dyke responded that "appraising is subjective" and that he "felt that the comparable
6 sales used were most relevant." Mr. Clark opined that "[t]he word 'subjective' . . .
7 appears to override the need for the appraiser to be objective. There were numerous,
8 more architecturally similar sales, both of similar size to the measured and to the
9 assessed livable, in the immediate neighborhood, that were not used [or] addressed."

10 19.4 Mr. Clark also pointed out that Mr. Van Dyke's response to the initial anonymous
11 complaint stated that, "[a]fter this report was submitted to the lender it was made clear
12 to the appraiser that it would not be used. The value the homeowner expected would
13 be there was not due to a stabilization of market conditions." Mr. Clark opined that "it
14 appears that the appraiser . . . was aware of the homeowner's expectation of value and
15 was not able to meet that value. The appraiser should not even know the value
16 'expected', let alone attempt to appraise to it, and this appears to be a violation of the
17 Ethics Provision"

18 20. Mr. Clark addressed the comparable sales that Mr. Van Dyke used, as follows:

19 20.1 Comparable sales #1 and #2 were on Wisteria Drive. But Mr. Clark testified that this is
20 not enough to show proximity; streets may run for miles. According to the realtor whom
21 Mr. Clark interviewed, these sales were build-to-suit homes that were one-story, unlike
22 the two-story subject. The market prefers one-story homes.

23 20.2 In addition, the transfer of comparable sales #1 and #2 took place between the builder
24 and buyer, likely based on an earlier contract, without MLS participation, even though
25 Mr. Van Dyke cited MLS as a source. Mr. Van Dyke did not disclose how the room
26 counts or bath counts were determined. Mr. Clark testified that this information would
not have been readily available if the properties had not been listed on MLS.

27 20.3 Photographs of comparable sales #1 and #2 showed single-level homes that Mr. Clark
28 estimated to be approximately 2400 square feet. The purchase of comparable sales #1
29 and #2 took place prior to the previous purchase of the subject for, respectively,
30 \$50,000 and \$27,000 more than the subject. Comparable sales #1 and #2 were brand
31 new, unlike the subject when Mr. Van Dyke appraised it.

1 20.4 Comparable sale #3 was more than 3 miles away from the subject and was also a new
2 home from the builder, not a year old like the subject. The MLS indicated \$65,000 in
3 upgrades, which likely were superior to the subject's amenities. Although the report
4 stated that no closer sales were available, Mr. Clark identified four closer, more similar
5 sales.⁵

6 20.5 Comparable sale #4 was the only true resale of the four sales used. The MLS indicated
7 that comparable sale #4 was much more highly upgraded than the subject. Mr. Van
8 Dyke had not made appropriate adjustments for comparable sale #4's superior
9 amenities.

10 20.6 Comparable sale #5 was listed in the MLS for \$599,900. Mr. Van Dyke's report showed
11 a deduction of \$19,770 for the asking price. He made no adjustment for a livable area
12 that was 133 square feet larger than the subject, even according to Mr. Van Dyke's
13 calculations, which exceeded the assessed and listed livable area. According to Mr.
14 Clark, comparable sale #5 "did finally sell for \$548,000 in June of 2007 after 213 days
15 on the market."

16 21. Mr. Clark also identified four sales that Mr. Van Dyke had not used that were more
17 comparable to the subject than the comparable sales that Mr. Van Dyke had used, as
18 follows:

19 21.1 3004 S. Bell Place closed for \$491,475 on January 8, 2007. This property was a new
20 home but had MLS participation. It was shown as a two-story, 3904 square foot home
21 with 5 bedrooms and 4 baths. It had been listed for \$571,875 for 241 days. It had both
22 greenbelt and traffic noise influences.

23 21.2 3373 S. Kimberlee Court closed on September 26, 2006 for \$449,000. It was a true
24 resale of a two-story home shown as 3254 square feet, five bedrooms, 3.5 baths, and a
25 3-car garage. This sale was architecturally similar to the subject and was more similar
26 in terms of the assessed livable square footage. It had never been lived in.

21.3 3351 S. Roger Court closed on December 1, 2006 for \$450,000. It was also a resale
3667-square-foot, two-story home with 5 bedrooms, 3.5 baths, and a 4-car garage. It
has the greatest visual similarity to the subject because it was the same base model,
the Legacy.

21.4 2845 E. Honeysuckle Place closed on October 31, 2006 for \$450,000. It was a true
resale assessed at 3754 square feet, 5 bedrooms, 4 baths, and a 4-car garage.

⁵ The available comparable sales are described at Finding of Fact No. 21, *infra*.

1 21.5 Mr. Clark testified that all of these sales indicated high levels of upgrading and
2 amenities, like the subject. His report noted that the four comparable sales that Mr. Van
3 Dyke did not use "demonstrate a measurable, downward time factor that is not indicated
in the report."

4 22. The Ethics Rule – Conduct provides that "[a]n appraiser must not accept an assignment
5 that includes the reporting of a predetermined opinions or conclusions." Based on Mr.
6 Van Dyke's choice of comparable sales and failure to include more comparable sales
7 that would have indicated a lesser value, Mr. Clark believes that Mr. Van Dyke violated
this provision and that there was "a direction in assignment results that favors the client."

8 23. The Ethics Rule – Conduct also provides that "[a]n appraiser must not communicate
9 assignment results in a misleading or fraudulent manner." Mr. Clark testified that Mr.
10 Van Dyke also violated this rule by apparently overstating the subject's livable square
11 footage, choosing as comparables old-contract builder sales and out-of-subdivision
12 sales, failing to discuss different architecture, and almost completely failing to include
13 any narrative discussion regarding most of these factors. These errors "would tend to
indicate the assignment result may have been influenced by the client or borrower's
value estimate."

14 24. The Ethics Rule – Competency Rule provides that "[a]n appraiser must gather and
15 analyze information about those assignment elements that are necessary to properly
16 identify the appraisal." Mr. Clark opined that this rule was violated by Mr. Van Dyke's
17 "minimal notes from the inspection and the disparities between the hand drawn sketch
18 with missing dimensions, as well as missing dimensions on the machine generated
19 sketch addendum, which has a different appearance than the hand-drawn." Mr. Clark
20 also opined that Mr. Van Dyke's errors relating to zoning, neighborhood influences,
increasing versus stable or more likely declining values, inconsistent and inaccurate
marketing times, and the natural gas supply violated this rule.

Mr. Van Dyke

21 25. Mr. Van Dyke testified that, although he had collected data for his appraisal report of the
22 Wisteria Drive property, he had not finalized the report. His last communication
23 regarding the report was on February 13, 2007, when the owner of The Appraisal
24 House, his employer at the time, who was also his brother-in-law, informed him that,
25 based on the preliminary opinion of value, the lender had canceled the appraisal
26 request. All he had been paid to do was field work.

- 1 26. Mr. Van Dyke testified that, when he found out about the initial anonymous complaint in
2 August 2007, he was no longer working for The Appraisal House. He had left its
employment in May 2007 "under duress."
- 3 27. Mr. Van Dyke testified that he called the lender and was told that it had canceled the
4 appraisal request and informed the client that it was unable to provide a loan. Mr. Van
5 Dyke then contacted his brother-in-law at The Appraisal House and requested the
6 original copy of his preliminary appraisal report. He had received everything except the
7 manila folder, which would have shown the date of inspection, when the appraisal had
been canceled, and by whom.
- 8 28. Mr. Van Dyke testified that it was his digital signature on the appraisal report of the
9 Wisteria Drive property, which he had never authorized to be used. Mr. Van Dyke
10 testified that he was "flabbergasted" that his report on the Wisteria Drive property had
gone out with his digital signature, without his authorization.
- 11 29. Mr. Van Dyke admitted that it was a violation of applicable standards to have digital
12 signatures that were not password-protected. Because The Appraisal House had
13 refused to protect its employees' digital signatures, Mr. Van Dyke testified he had left its
employment.
- 14 30. Mr. Van Dyke had admitted into evidence the cover page from his appraisal report of the
15 Wisteria Drive property, which showed that it had been prepared for Shad Peterson at
16 Mesa Mortgage, and photographs of the subject and comparable sales. The Board
17 conceded that these documents completed the appraisal report. Mr. Van Dyke also
pointed out in his hand-drawn sketch of the layout of the subject property included the
18 radius of the circular alcove.
- 19 31. Mr. Van Dyke claimed that he had gotten information on comparable sales #1 and #2
20 from the realtor. But he admitted that this information is not attributed to the realtor in
the report.
- 21 32. Mr. Van Dyke also admitted that there was nothing that had been provided to the Board
22 that would indicate that the appraisal report of the Wisteria Drive property had been
canceled or that the report had been sent out without his authorization.
- 23 33. The only part of his response to the initial anonymous complaint that Mr. Van Dyke
24 testified adverted to these circumstances was the paragraph quoted *supra* at Finding of
25 Fact No. 19.4, which Mr. Clark opined had evidenced Mr. Van Dyke's attempt to
26

1 appraise the property at an expected value. Mr. Van Dyke admitted that his response to
2 the complaint also included the following:

3 34. As the licensed appraiser hired to perform the work on this file, I accept responsibility for
4 the quality of this report. Mr. Van Dyke testified that the lender was in the office next
5 door to The Mortgage House. He was "not exactly aware" of the value that the lender
6 required because "other people were doing the market analysis." His appraised value of
7 the Wisteria Drive property was "in the ballpark."

8 35. Mr. Van Dyke testified that, when he prepared the response, he was under pressure
9 from his wife and brother-in-law not to implicate his brother-in-law. Although he wanted
10 to be more forthcoming with the Board, he was "convinced otherwise" by "people he
11 loves and trusts."

12 36. Mr. Van Dyke testified that he requested a hearing on the Board's proposed discipline
13 because it is a "tough market" in which it is "hard to keep clients." Mr. Van Dyke
14 appreciates the value of education and of a mentor because the only person he has ever
15 worked with is his brother-in-law. Mr. Van Dyke testified that he no longer uses
16 boilerplate language in his reports and requested that the probation be for a period of
17 less than 12 months.

18 CONCLUSIONS OF LAW

- 19 1. This matter lies within the Board's jurisdiction.⁶
- 20 2. The Board bears the burden of proof and must establish cause to penalize Mr. Van
21 Dyke's license by a preponderance of the evidence.⁷
- 22 3. "A preponderance of the evidence is such proof as convinces the trier of fact that the
23 contention is more probably true than not."⁸ A preponderance of the evidence is "[t]he
24 greater weight of the evidence, not necessarily established by the greater number of
25 witnesses testifying to a fact but by evidence that has the most convincing force;
26 superior evidentiary weight that, though not sufficient to free the mind wholly from all
reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the
issue rather than the other."⁹

⁶ See A.R.S. § 32-3601 *et seq.*

⁷ See A.R.S. § 41-1092.07(G)(2); A.A.C. R2-19-119; *see also Vazanno v. Superior Court*, 74 Ariz. 369, 372, 249 P.2d 837 (1952).

⁸ Morris K. Udall, ARIZONA LAW OF EVIDENCE § 5 (1960).

⁹ BLACK'S LAW DICTIONARY at page 1220 (8th ed. 1999).

- 1 4. The Arizona legislature created the Board to prescribe and enforce standards of
2 professional appraisal practice.¹⁰ The Arizona legislature charged the Board with
3 investigating complaints against licensed appraisers and, if violations of applicable
4 statute, regulation, or standard are established, disciplining appraisers' licenses.¹¹
- 5 5. Licensed appraisers' appraisals in Arizona must comply with USPAP.¹²
- 6 6. The most basic requirement for an appraisal is that it must be independently and
7 impartially performed and set forth an unbiased opinion of value supported by analyses
8 that comply with USPAP's requirements.¹³
- 9 7. Mr. Van Dyke did establish with the additional pages produced at the hearing that the
10 appraisal report for the Wisteria Drive property was complete.
- 11 8. The Board has otherwise established that Mr. Van Dyke violated USPAP SR 1-1(b) and
12 (c) and SR 2-1(a), (b), and (c) and Standards Ethic Rule – Conduct and Standards
13 Ethics Rule – Competency in his development and preparation of the appraisal report
14 for the Wisteria Drive property in the manners described in Mr. Clark's report and
15 testimony.
- 16 9. Although Mr. Van Dyke's difficult family situation may have compromised his
17 independence and made his violations of USPAP more likely, because he is a licensed
18 professional who is expected to be independent, his family situation cannot vitiate his
19 violations.

ORDER OF PROBATION

16 In issuing this order of discipline, the Board considers its obligations to fairly and
17 consistently administer discipline, its burden to protect the public welfare and safety, as well as
18 all aggravating and mitigating factors presented in the case. Based on the foregoing Findings of
19 Fact and Conclusions of Law, **IT IS HEREBY ORDERED:**

- 20 1. **Upon the effective date of this Order, Respondent's License as a Licensed**
21 **Residential Appraiser shall be placed on probation for a period of twelve (12)**
22 **months.** During probation, Respondent shall comply with USPAP, Arizona Revised
23 Statutes and Appraisal Board rules.

24 ¹⁰ A.R.S. § 32-3605(B)(1).

25 ¹¹ A.R.S. § 32-3631(A)(2) and (6); see also A.A.C. R4-46-301 (concerning complaints and investigations)
and R4-46-302 (concerning formal hearing procedures, investigations, and penalties).

26 ¹² A.A.C. R4-46-401.

¹³ A.R.S. § 32-3601(1) and (2).

2. Respondent shall successfully complete the following education within ninety (90) days of the effective date of the Board's Order: **a minimum of fifteen (15) hours of coursework in report writing, which includes the successful completion of an exam and fifteen (15) hours of basic appraisal, to include the successful completion of an exam.** The education required above may not be counted toward the continuing education requirements for the renewal of Respondent's certificate. Proof of completion of the required education must be submitted to the Board within 3 weeks of completion of the required courses.
3. During the term of probation, Respondent shall: (a) demonstrate resolution of the problems that resulted in this disciplinary action; and (b) otherwise comply with the terms of this Order.
4. During the period of probation, Respondent shall complete a minimum of **twenty-four (24) appraisal reports or review appraisals** under the supervision of an Arizona Certified Residential or Certified General Appraiser who shall serve as Respondent's Mentor ("Mentor"). The Mentor shall be either an Arizona Certified Residential or Certified General Appraiser.
5. **During the probationary period, the Respondent shall not issue a verbal or written appraisal, appraisal review, or consulting assignment without prior review and approval by a Mentor.** Each report shall be signed by the Mentor as a supervisory appraiser. In the event that Respondent's client will not accept the signature of the Mentor affixed to an assignment as a supervisory appraiser, the Mentor need not co-sign the report, but must complete a written review of each report ensuring that the report complies with USPAP and the Board's statutes and rules. The Mentor's review shall comply with the requirements of Standard 3 of the USPAP. The Mentor's Standard 3 review shall be completed before the report is issued to the client. Any changes the Mentor requires to ensure the report complies with the USPAP shall be completed by the Respondent and approved by the Mentor before the report is issued. The Mentor's written Standard 3 review shall be maintained by the Mentor and made available to the Board upon request. In order to invoke these provisions, the Respondent must submit proof to the Board with his monthly log showing that his client's policies prevent co-signature by the Mentor.
6. The Mentor must be approved by the Board and is subject to removal by the Board for nonperformance of the terms of this Order. The Mentor may not have a business

- 1 relationship with Respondent except for the Mentor/Mentee relationship nor may the
2 Mentor be related to Respondent. Any replacement Mentor is subject to the Board's
3 approval and the remaining terms of this Order. The Board's Executive Director may
4 give temporary approval of the Mentor until the next regular meeting of the Board.
- 5 7. Not more than **30 days** after the effective date of this Order, Respondent shall submit to
6 the Board the name and resume of an Arizona Certified Residential or Arizona Certified
7 General Appraiser who is willing to serve as Respondent's Mentor together with a letter
8 from the potential Mentor agreeing to serve as Respondent's Mentor. If requested by
9 Board staff, Respondent shall continue to submit names, resumes, and letters agreeing
10 to serve as Mentor until a Mentor is approved by the Board. Any Mentor must be
11 approved in writing by the Board.
- 12 8. Respondent shall bear all costs and expenses associated with the mentorship and
13 incurred in attended the required courses.
- 14 9. The Mentor shall submit monthly reports to the Board for each calendar month during
15 Respondent's probationary period reflecting the quantity and quality of Respondent's
16 work, including, but not limited to, improvement in Respondent's practice and resolution
17 of those problems that prompted this action. The Mentor's report shall be filed monthly
18 beginning the 15th day of the first month following the start of Respondent's probationary
19 period and continuing each month thereafter until termination of the probationary period
20 by the Board. **Even if the Mentor reviews no appraisals during a given month, a
21 report stating that no appraisals were reviewed or approved must be submitted.**
22 It is the Respondent's responsibility to ensure that the Mentor submits his/her reports
23 monthly. If the monthly reporting date falls on a Saturday, Sunday, or holiday, the
24 report is due on the next business day. The monthly report may be filed by mail or
25 facsimile.
- 26 10. The Respondent shall file an appraisal log with the Board on a monthly basis listing
every Arizona appraisal that he has completed within the prior calendar month by
property address, appraisal type, valuation date, the Mentor's review date, the date the
appraisal was issued, and the number of hours worked on each assignment. The report
log shall be filed monthly beginning the 15th day of the first month following the start of
Respondent's probationary period and continuing each month thereafter until the Board
terminates the probation. If the log reporting date falls on a Saturday, Sunday, or
holiday, the report log is due on the next business day. **Even if Respondent performs**

1 no appraisals within a given month, he must still file an appraisal log with the
2 Board showing that no appraisals were performed. The monthly log report may be
3 filed by mail or facsimile.

4 11. The Board reserves the right to audit any of Respondent's reports and conduct peer
5 review, as deemed necessary, during the probationary period. The Board may, in its
6 discretion, seek separate disciplinary action against the Respondent for any violation of
7 the applicable statutes and rules discovered in an audit of the Respondent's appraisal
8 reports provided to the Board under the terms of this Consent Agreement.

9 12. Respondent's probation, including mentorship, shall continue until: (a) Respondent
10 petitions the Board for termination as provided in paragraph 13, and (b) the Board
11 terminates the probation and mentorship. Upon petition by the Respondent for
12 termination of the probation and mentorship, the Board will select and audit 3 of
13 Respondent's appraisal reports.

14 13. At the end of **twelve (12) months** from the effective date of this Order, the Respondent
15 must petition the Board for termination of his mentorship and probation. If the Board
16 determines that Respondent has not complied with **all** the requirements of this Order,
17 the Board, at its sole discretion, may institute proceedings for noncompliance with this
18 Order, which may result in suspension, revocation, or other disciplinary and/or remedial
19 action.

20 14. Respondent shall not act as a supervising appraiser for other appraisers or trainees, nor
21 shall he act as a mentor during the term of the probation. Respondent shall also not
22 teach any course related to real estate appraisals during the term of the probation.

23 15. Respondent shall comply with the Uniform Standards of Professional Appraisal Practice
24 in performing all appraisals and all Board statutes and rules.

25 16. If, between the effective date of this Order and the termination of Respondent's
26 probation by the Board, Respondent fails to renew his license while under this Order
and subsequently applies for a license or certificate, the remaining terms of this Order,
including probation and mentorship, shall be imposed if the application for license or
certificate is granted.

17. Respondent understands that this Order, or any part thereof, may be considered in any
future disciplinary action against him.

18. If Respondent fails to comply with the terms of this Order, the Board shall properly
institute proceedings for noncompliance with this Order, which may result in

1 suspension, revocation, or other disciplinary and/or remedial actions. Respondent
2 understands that any violation of this Order is a violation of A.R.S. § 32-3631(A)(8),
3 which is willfully disregarding or violating any of the provisions of the Board's statutes or
the rules of the Board for the administration and enforcement of its statutes.

4 19. Respondent understands that this Order does not constitute a dismissal or resolution of
5 other matters currently pending before the Board, if any, and does not constitute any
6 waiver, express or implied, of the Board's statutory authority or jurisdiction regard any
other pending or future investigation, action or proceeding.

7 20. Respondent understands that this Order is a public record that may be publicly
8 disseminated as a formal action of the Board.

9 21. Pursuant to the Board's Substantive Policy Statement #1, the Board considers the
violations in the above-mentioned matter to constitute to a **Level III Violation**.

10 **RIGHT TO PETITION FOR REHEARING OR REVIEW**

11 Respondent is hereby notified that he has the right to petition for a rehearing or review.
12 Pursuant to A.R.S. § 41-1092.09, as amended, the petition for rehearing or review must be filed
13 with the Board's Executive Director within 30 days after service of this Order and pursuant to
14 A.A.C. R4-46-303, it must set forth legally sufficient reasons for granting a rehearing or review.
15 Service of this order is effective five days after mailing. If a motion for rehearing or review is not
16 filed, the Board's Order becomes effective 35 days after it is mailed to Respondent.

17 Respondent is further notified that the filing of a motion for rehearing or review is
18 required to preserve any rights of appeal to the Superior Court.

19 DATED this 17th day of April, 2009.

20 ARIZONA STATE BOARD OF APPRAISAL

21 By: Deborah G. Pearson
22 Deborah G. Pearson, Executive Director

23 Copy of the foregoing personally served
24 this 17th day of April, 2009, on:

25 OFFICE OF ADMINISTRATIVE HEARINGS
26 1400 WEST WASHINGTON, SUITE 101
PHOENIX, AZ 85007

1 Copy of the foregoing mailed via regular U.S.
2 & Certified Mail #7008 1140 0004 9529 3074
3 this 20th day of April, 2009, to:

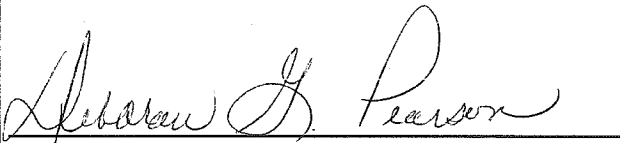
4 ROBERT L. VAN DYKE
5 4238 E. HARVARD AVE.
6 GILBERT, AZ 85234

7 Copies of the foregoing sent by interagency
8 this 20th day of April, 2009, to:

9 JEANNE M. GALVIN
10 ASSISTANT ATTORNEY GENERAL
11 1275 W. WASHINGTON
12 PHOENIX, AZ 85007

CHRISTOPER MUNNS
ASSISTANT ATTORNEYS GENERAL
SOLICITOR GENERAL'S OFFICE
1275 W. WASHINGTON
PHOENIX, AZ 85007

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Deborah G. Pearson